G-Ledy

(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.No. . . .402. . . .OF 2003

PETITIONER / DETENUE — NEEL KANTH GAOLI AGED ABOUT 45 YEARS;
S/o BILLU GAOLI,
OCCUPATION - DAIRY OWNER,
R/o LAL BAGICHA WARD, DHAMTARI
TAHSIL AND DISTRICT DHAMTARI(C.G.)

VERSUS

RESPONDENTS

1. STATE OF CHHATTISGARH
THROUGH THE DISTRICT MAGISTRATE
DHAMTARI.

2. CHIEF SECRETARY
GOVERNMENT OFCHHATTISGARH,
MINISTRY OF HOME, SHRI ROBERT HANGDOLA
D.K.BHAVAN RAIPUR(C.G.)

P. R. No. 3725/03
Presented by Shri Santosh Sahu
dated 27-11-03

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF SUITABLE WRIT, DIRECTION OR ORDER

129

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.4102 of 2003

Neel Kanth Gaoli

Versus

State of Chhattisgarh and another

ORDER FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

POST FOR ORDER ON 6th MAY, 2004

Sd/-
L.C. Bhadoo
Judge

130

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.4102 of 2003

Neel Kanth Gaoli

Versus

State of Chhattisgarh and another

Present: -

Shri C.R. Sahu, Advocate for the petitioner.

Shri P.K. Verma, Additional Advocate General for the State/respondents.

Division Bench*: **Hon'ble Shri K.H.N. Kuranga, C.J.**
& Hon'ble Shri L.C. Bhadoo, J.

ORDER

(Passed on 6th May,2004)

The following order of the Court was passed by **Justice L.C. Bhadoo.**

By this writ petition filed under Article 226/227 of the Constitution of India the petitioner namely Neel Kanth Gaoli has challenged his detention order dated 7th November 2003 (Annexure-P/5) passed by the District Magistrate, Dhamtari in exercise of the powers conferred upon him under sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as 'the Act').

(2) In compliance of the impugned order the petitioner was taken into custody by the police on 10-11-2003 and since then he is lodged in Central Jail, Raipur. It is alleged that the detention order passed against the petitioner is based on old and stale matters and in most of the matters the petitioner was already acquitted. As per the petition all the 8 grounds mentioned in the memorandum (Annexure-P/5) of the Collector relate to old and stale matters. Moreover, these criminal matters were relating to personal disputes between the parties and same were not relating to public in general, therefore, it could not be said that these

matters were relating to public order. Hence, the District Magistrate, Dhamtari had passed the impugned detention order without application of mind.

(3) Return has been filed on behalf of the State in which it has been mentioned that mere acquittal in certain cases give no benefit to the petitioner who is a habitual criminal as would be evident from a plethora of cases registered against him from the year 1994 to 2003. He, as a matter of routine, used to create nuisance and disturbance in the adjacent land owned by Yateemkhana Usmania Anjuman Islamia, Dhamtari, and his activities were of such nature as to disturb the existing communal harmony and create an explosive situation of law and order which would cause extensive loss, damage and disharmony to the public at large.

(4) We have heard the learned counsel for the parties.

(5) Learned counsel for the petitioner argued that as per sub-section (3) of Section 3 of the Act, in the first instance, the period of detention cannot exceed more than 3 months whereas, in the impugned order no time for detention has been mentioned. Moreover, vide order dated 31-12-2003, the Principal Secretary, Home Department, State of Chhattisgarh has ordered for detention of the petitioner for a period of one year up to 9-11-2004, which is also contrary to the spirit of sub-section (3) of Section 3 of the Act which says that at one time the period of detention shall not exceed more than 3 months. He further argued that the grounds for detention made in the impugned order by the District Magistrate, in the first instance, relate to old and stale matters. Moreover, these offences relate to personal disputes between the private parties and same could not have been made a ground for detention under sub-section (2) of Section 3 of the Act. He further argued that all these cases were terminated in favour of the petitioner by way of acquittal or by withdrawing the prosecution or by dropping the proceedings. The District Magistrate has issued the order without application of mind.

(6) On the other hand, the learned Additional Advocate General Shri P.K. Verma supported the order and argued that mere acquittal or withdrawal of

(132)

the criminal cases cannot be taken as legitimate ground for assailing the impugned order, as the same has been passed after due consideration of the material on record by the District Magistrate. The continued involvement of the petitioner in disturbing the public order and tranquility forced the District Magistrate to issue the detention order.

(7) We have perused the records and considered the rival arguments.

(8) As per sub-section (2) of Section 3 of the Act 'the Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order, make an order directing that such person be detained' and as per sub-section (3) of Section 3 of the Act 'If a District Magistrate or a Commissioner of Police or the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section'. Sub-section (3) further prescribes that ' the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.'

(9) A perusal of the impugned order dated 7-11-2003 shows that no period of detention has been mentioned in this order. Similarly, a perusal of the order dated 31-12-2003 passed by the Principal Secretary, Home Department, State of Chhattisgarh, shows that the petitioner's detention was made after approving the detention order made by the Collector. The detention was made for a period of one year from the date of the detention up to 9-11-2004. Therefore, both these orders are illegal and contrary to the spirit of proviso to sub-section (3)

133

of Section3 of the Act because as per this proviso, in the first instance, the petitioner could not have been detained exceeding 3 months whereas, no period of detention has been mentioned in the impugned order dated 7th November 2003 issued by the District Magistrate. Secondly, under the order dated 31-12-2003 issued by the Government the detention of the petitioner was made for a period of one year whereas, the proviso prescribes that the State Government on satisfaction that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time. Therefore, on this ground only the above orders are liable to be quashed, as the same are contrary to the mandatory provisions of law.

(10) Now, coming to the merits of the case, the learned Additional Advocate General very fairly submitted that the petitioner has been acquitted in all the criminal cases which were made a ground for detention of the petitioner. As has been mentioned by the petitioner that grounds 1 to 4 relate to dispute dated 28-11-94 with Kalyan Sundrani, Jagdish Singh, Yashoda Bai and Punau @ Mindhuram Dhimar. All these disputes took place during the Municipal Council elections and in all these cases the petitioner has already been acquitted and all these matters were very old and stale. In these cases also the dispute was between the individuals regarding the elections of the Municipal Council and it was not concerning with the public at large. As far as ground No.5 is concerned, it has been mentioned that the petitioner with the help of his brothers trespassed into the house and plot of one Subhash Sahu and started illegal selling of the liquor. On 03-08-2002, the petitioner assaulted Subhash Sahu on account of which case was registered at no.400/02 under Section 325 read with Section 34 of the I.P.C.. In the first instance, this dispute was also with a private person and in that case also the petitioner has been acquitted. Moreover, the defence of the petitioner is that the said land was taken by him from Subhash Sahu on lease under the agreement (Annexure-P/6) and for which eviction suit filed by Subhash Sahu is pending

134

against the petitioner in the Court of the Additional District Judge, Dhamtari. Therefore, in view of the above facts, this could not have been made a ground for detention of the petitioner.

(11) As far as ground No.6 is concerned, it is alleged that the petitioner was caught along with one Mahipal on 17-9-2003 while selling the illegal liquor and the case was registered under Sections 36 and 16(4)(3) of the Excise Act. In this case also the petitioner has been acquitted. As far as the case under Sections 107 and 116(3) of the Cr.P.C. is concerned which was made a ground No.7 also stands closed. As far as ground No.8 is concerned, there was dispute regarding land between Laxmin Bai, Satya Narayan and Virendra Kumar on the one hand and Anjuman Yateem Khana Islamia Dhamtari on the other hand and the Municipality gave permission to Yateem Khana for construction of the compound wall against which the above persons filed civil suit in the Court of 2nd Civil Judge, Class-II Dhamtari in which after going through the records the learned 2nd Civil Judge, Class-II passed an injunction order under Order 39 Rule 1 & 2 C.P.C. against Yateem Khana restraining the construction. Finding prima facie case of the plaintiffs the injunction order was issued against Yateem Khana. Therefore, it was also a dispute between the individuals and even the civil suit was pending regarding that land, therefore, it cannot be termed as an act prejudicial to the public order.

(12) In the matter of **Smt. Angoori Devi Vs. Union of India and others** reported in **(1989) 1 SCC 385,** the Hon'ble Apex Court had occasion to consider fine distinguishing feature between public order and law and order. Their Lordships observed as follows:-

> "**12.** The impact on "public order" and "law and order" depends upon the nature of the act, the place where it is committed and motive force behind it. If the act is committed on an individual without directly or indirectly affecting the tempo of the life of the community, it may be a

135

> matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquility, it may fall within the orbit of the public order. This is precisely the distinguishing feature between the two concepts. Sometimes, as observed by Venkatachaliah, J., in *Ayya alias Ayub Vs. State of U.P.:* "What might be an otherwise simple 'law and order' situation might assume the gravity and mischief of a 'public order' problem by region alone of the manner of circumstances in which or the place at which it is carried out." Necessarily, much depends upon the nature of the act, the place where it is committed and the sinister significance attached to it."

In the matter of **State of U.P. Vs. Harishanker Tewari** reported in **(1987) 2 SCC 490**, the Hon'ble Apex Court observed as under:-

> "Consequently, there is a difference between law and order and public order but what in a given situation may be a matter covered by law and order may really turn out to be one of public order. One has to turn to the facts of each case to ascertain whether the matter relates to the larger circle or the smaller circle".

The Supreme Court has dealt with the difference between "law and order" and "public order", in the case of **Smt. Victoria Fernandes Vs. Lalmal Sawma** reported in **AIR 1992 Supreme Court 687,** para-8 of which reads as under:-

> "While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order, while 'public order' has a narrower ambit and public order would be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of law and order and public order is one of degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly

136

> involved as distinct from a wider spectrum of public, it could raise the problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular corruption of disorder that helps distinguish it as an act affecting 'public order' from that concerning 'law and order'. The question to ask is: Does it lead to disturbance of the current life of the community so as to amount a disturbance of the public order or does it effect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on its facts".

(13) For applying the above-mentioned tests it is necessary to see that if the act is committed on an individual without directly or indirectly affecting the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquility, it may fall within the orbit of the public order. In the light of the above principle, if we consider the facts of the present case, we are of the opinion that the grounds 1 to 8 which were made the basis for issuance of the impugned order were concerning law and order only and the disputes were between the private individuals and were not concerning the life of the community and public order.

(14) In view of the above discussion, we are of the considered opinion that the detention order passed by the learned District Magistrate, Dhamtari dated 7th November 2003 and confirmed by the State Government vide its order dated 31-12-2003 is not sustainable, as the same suffers from the vice of non-application of mind.

(15) In the result, the writ petition is allowed. The impugned order dated 7th November 2003 passed by the District Magistrate, Dhamtari and the State Government order dated 31-12-2003 are quashed.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

Barve/-